**POH BOON HOCK**

**v.**

**TIMBALAN MENTERI DALAM NEGERI MALAYSIA & ANOR.**

HIGH COURT MALAYA, PENANG
TUAN T. SELVENTHIRANATHAN JC
[CRIMINAL APPLICATION 44-15-93]
22 AUGUST 1994

***PREVENTIVE DETENTION** : Applicant detained under the provisions of the Dangerous Drugs (Special Preventive Measures) Act 1985 - Whether there was non-compliance with r. 3(3) of the Dangerous Drugs (Special Preventive Measures)(Advisory Board Procedures) Rules 1987 - Whether applicant was reminded of his right to make representations against his detention to an advisory board constituted under Clause (2) of Article 151 of the Federal Constitution.*

The applicant challenged his detention under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) on the grounds that there was non-compliance with r. 3(3) of the Dangerous Drugs (Special Preventive Measures)(Advisory Board Procedure) Rules 1987 (the Rules) which requires the officer in charge of the place of detention to remind the detainee of his rights to make representations against his detention to an advisory board constituted under Clause (2) of Article 151 of the Federal Constitution.

The applicant contended that although the reminder was given in Bahasa Malaysia, the failure to use an interpreter to further explain or interpret the reminder in the Hokkien dialect rendered the applicant's detention illegal.

**Held:**

**[1]** The contention of Counsel for the applicant that the rendering of the reminder in Bahasa Malaysia made the detention of the applicant unlawful, because the reminder was not interpreted into the Hokkien dialect to be understood by the applicant, is devoid of merit. There was no specific allegation of fact made on behalf of the applicant that the reminder was not given or, if given in Bahasa Malaysia, that it was not understood by the applicant, bearing in mind that the reminder in Bahasa Malaysia only served to further drive home to the applicant that he had a right to make representations to the advisory board, which right had already been explained and interpreted to him previously in the Hokkien dialect when the detention order was served on him.

**[2]** In the absence of direct evidence on an equal footing to controvert the factual and categorical statement of the officer in charge of the place of detention, that he had used Bahasa Malaysia which was simple and easily understood by the applicant and that, the applicant had acknowledged to him that he understood Bahasa Malaysia after the officer had asked him (the applicant) whether he understood the explanation and that, the applicant had not objected to the use of Bahasa Malaysia and had not asked for the services of an interpreter, the objection based on the failure to render the reminder in the Hokkien dialect is totally groundless.

**[3]** As the written representation of the applicant in Form 1 was in fact forwarded and heard by the advisory board within the stipulated time frame, it could not be argued that the failure to use the Hokkien dialect to remind the applicant of his right to make representations would result in a breach of Article 151(1)(b) of the Federal Constitution.

**[4]** On the strength of the affidavits filed it was clear that the reminder was given to the applicant in a language that he understood and that rule 3(3) of the Rules was complied with by the detaining authority.

*[Application dismissed]*

**Cases referred to:**
*Lee Teng Kui v Menteri Hal Ehwal Dalam Negeri, Malaysia dan lain [1993] 1 AMR 22: 913* ***(refd)***
*Liew Kim Swee v. Menteri Dalam Negeri, Malaysia and others [1991] 1 CLJ 53* ***(refd)***
*Chui Peng Leng v. Menteri Hal Ehwal Dalam Negeri, Malaysia dan lain, KL High Court, Crim. Application No. 44-4-93 (unreported)* ***(refd)***
*Teoh Yook Huwah v. Menteri Hal Ehwal Dalam Negeri and another [1993] 1 CLJ 261* ***(refd)***

**Legislation referred to:**
Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3, 6(1), 11A(1)(a)(aa),
Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987, r. 3(3)
Federal Constitution Article 151 (1)(b), (2)
Evidence Act 1950, ss. 103, 106, 114

*For the applicant - Ranjit Singh Dhillon; M/s. Rajasingam & Co.*
*For the respondents - Mahmud bin Haji Abdullah, DPP*

**JUDGMENT**

**T. Selventhiranathan JC:**
The applicant was arrested on 10 September 1991 and detained initially under s. 3 of the Dangerous Drugs (Special Preventive Measures) Act 1985 ("the Act"), followed by detention for a period of two years from 8 November 1991 pursuant to an order made by the Deputy Minister of Home Affairs under s. 6(1) of the Act. This first order of detention made under s. 6(1) was extended for a further period of two years by a subsequent order made under s. 11A(1)(a)(aa) of the Act.

The detention of the applicant was challenged before me on the specific ground of non-compliance with r. 3(3) of the Dangerous Drugs (Special Preventive Mensures) (Advisory Board Procedure) Rules 1987 ("the Rules"). Rule 3(3) requires the officer in charge of the place of detention as soon as practicable to remind a detainee of his right to make representations against his detention to an advisory board constituted under Clause (2) of Article 151 of the Federal Constitution. In the present case, the challenge was mounted on the ground that, although the reminder was given to the applicant in Bahasa Malaysia, the failure to use an interpreter to further explain of interpret the reminder in the Hokkien dialect rendered the applicant's detention illegal.

The applicant's brother, Poh Boon Eng, in a lengthy affidavit (enclosure (2)) made various allegations raising virtually every possible ground of challenge to the detention of the applicant but these were all abandonded by his Counsel Encik Ranjit Singh Dhillon at the hearing of the application. Instead, learned Counsel for the applicant proceeded on the basis that the failure to explain or interpret to the applicant in the Hokkien dialect the reminder given to him in Bahasa Malaysia of his right to make representations to the advisory board upon his arrival at the place of detention on 10 November 1991 was fatal. He referred to the affidavit of the officer in charge of the place of detention (enclosure (11)) wherein it was deponed that the reminder had been rendered in Bahasa Malaysia. From this, the Court was asked to infer that, as the applicant had been reminded only in Bahasa Malaysia of his right to make representations, the failure to render such reminder in the Hokkien dialect resulted in non-compliance with r. 3(3) of the Rules, which failure made his detention unlawful.

It was submitted on the applicant's behalf that the procedural requirements relating to his detention had to be strictly adhered to, and any slight deviation therefrom rendered the detention illegal. It was also contended that as the Hokkien dialect had been used at the two earlier stages of the detention exercise, *viz* to explain the reasons for his arrest when the applicant was arrested, and to explain the terms of the detention order when the order was served on him, the reminder should also have been rendered in the Hokkien dialect. Learned Counsel for the applicant relied on the case of *Lee Teng Kui v Menteri Hal Ehwal Dalam Negeri, Malaysia dan lain* [1993] 1 AMR 22: 913 to support this contention.

The learned Deputy Public Prosecutor, Encik Mahmud bin Haji Abdullah, for the respondents contended in reply that the applicant should himself have stated that he had not understood the reminder given to him in Bahasa Malaysia, if the objection were to be sustained. There was in fact no averment to the effect that the applicant was not conversant or fluent in Bahasa Malaysia. The learned Deputy further relied on the cases of *Liew Kim Swee v. Menteri Dalam Negeri, Malaysia and others* [1991] 1 CLJ 53, and *Chui Peng Leng v. Menteri Hal Ehwal Dalam Negeri, Malaysia dan lain*, an unreported decision of Mr Justice Abdul Aziz bin Mohamed in the High Court in Malaya at Kuala Lumpur *vide* criminal application 44-4-93, to support his submission.

In my view, the contention of Counsel for the applicant that the rendering of the reminder in Bahasa Malaysia made the detention of the applicant unlawful, because the reminder was not interpreted into the Hokkien dialect to be understood by the applicant, is devoid of merit. Counsel merely relied on the affidavit of the officer in charge of the place of detention that the reminder was rendered in Bahasa Malaysia, and on the fact that the Hokkien dialect had been used in the two earlier stages of the detention exercise adverted to above, to support this contention. However, the affidavit of the applicant's brother only referred, *inter alia*, to the purported failure of the detaining authority to serve upon and explain to the applicant the contents of certain specific documents relating to his detention (see enclosure (2)). There was no claim whatsoever that the oral reminder given in Bahasa Malaysia was not understood because it was not explained or interpreted in the Hokkien dialect. There was, therefore, no specific allegation of fact made on behalf of the applicant that the reminder was not given or, if given in Bahasa Malaysia, that it was not understood by the applicant, bearing in mind the reminder in Bahasa Malaysia only served to further drive home to the applicant that he had a right to make representations to the advisory board, which right had already been explained and interpreted to him previously in the Hokkien dialect when the detention order was served on him.

It would appear that when the respondents successfully rebutted the various allegations in the affidavit of the applicant's brother relating to the non-service of specific documents by exhibiting clear documentary proof to the contrary, including proof that the documents were explained or interpreted to the applicant in the Hokkien dialect, learned Counsel for the applicant went on a different tack to contend through inference, and in my view erroneously, that that affidavit also showed that the applicant did not understand the reminder given in Bahasa Malaysia. Indeed, if the contention was validly made, it should be that no reminder was given and not that the applicant did not understand the reminder given in Bahasa Malaysia. Put quite simply, how would the applicant know that the reminder was given in Bahasa Malaysia if he did not understand the language?

In relation to the reminder, the officer in charge of the place of detention stated categorically in his affidavit that he had informed, explained to and reminded the applicant, pursuant to r. 3(3) of the Rules, of his right to make representations against his detention to the advisory

board. He had used Bahasa Malaysia which was simple and easily understood by the applicant. The applicant had acknowledged to him that he understood Bahasa Malaysia after the officer had asked him whether he (the applicant) understood the explanation. The applicant had not objected to the use of Bahasa Malaysia and had not asked for the services of an interpreter.

In the absence of direct evidence on an equal footing to controvert this factual and categorical statement of the officer in charge of the place of detention, the objection based on the failure to render the reminder in the Hokkien dialect is totally groundless: see the illuminative judgment of the Supreme Court, speaking through Mr Justice Edgar Joseph Jr. SCJ, in *Teoh Yook Huwah v. Menteri Hal Ehwal Dalam Negeri and another* [1993] 1 CLJ 261 in this regard.

The police report lodged upon the arrest of the applicant shows that he is a Malaysian citizen holding a blue identity card bearing the number "A 0l49099". He was twenty-six years old at the time of his arrest, having been born on 9 June 1965. He was therefore not likely to be of that genre of Malaysian citizens born very much earlier who could probably claim not to understand even simple Bahasa Malaysia.

Section 114 of the Evidence Act 1950 provides as follows:

> 114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

The Court may therefore presume that as the applicant is a citizen of Malaysia, he is conversant with simple Bahasa Malaysia at least, in the absence of direct evidence to the contrary. If it is contended otherwise, the burden of proof would lie on him: see ss. 103 and 106 of the Evidence Act 1950.

Furthermore, there is only the bare statement of the applicant's Counsel (unsupported by any affidavit evidence) to the effect that the applicant could not have acquired fluency in Bahasa Malaysia during his initial detention of sixty days (under s. 3 of the Act). With respect, apart from the absence of any affidavit evidence to support the contention, the lack of fluency in Bahasa Malaysia as claimed could not be synonymous with the applicant being unable to converse in simple Bahasa Malaysia to understand the reminder given. This is evidently more so in the light of the uncontroverted evidence that a Chinese detective police constable, on the instructions of the police officer who served the detention order on the applicant, had acted as interpreter and informed the applicant in the Hokkien dialect of his right to make written representations to the advisory board against the detention order.

At the same time, the applicant was served with a copy each of the detention order, the statement of the facts and grounds upon which the order was made, and the notice of his right to make representations against the order to the advisory board, and with three copies of Form 1 in the Schedule to the Rules to enable him to make the representations. The contents of all these documents were also explained and interpreted to him in the Hokkien dialect. He acknowledged understanding their contents but refused to sign the documents (see enclosures (17) and (18) and the documents exhibited thereto). All this took place on 8 November 1991.

The applicant was subsequently escorted to the place of detention where, immediately upon arrival, the officer in charge reminded him in simple Bahasa Malaysia, which he understood and to the use of which language he neither raised any objection nor asked for the services of an interpreter, of his right to make representations. In the light of the earlier explanation

and interpretation in the Hokkien dialect of the relevant documents and of his right to make representations, and in the absence of any affidavit evidence whatsoever that no reminder was given or that he did not or could not understand the reminder given in simple Bahasa Malaysia, I found that the reminder was given to the applicant in a language that he understood and that r. 3(3) of the Rules had been compiled with by the detaining authority. I am fortified in this view by the fact that the written representation of the applicant in Form 1 was forwarded to the advisory board and received by it on 20 November 1991, and heard subsequently on 4 January 1992, which was well within the prescribed time of three months within which the representation must be heard after being received by the advisory board. In the circumstances, when the representation itself was made by the applicant and heard by the advisory board, I must confess that it is beyond my ken how it could ever be contended that the failure to use the Hokkien dialect to remind the applicant of his right to make representations would result in a breach of Article 151(1)(b) of the Federal Constitution which stipulates that any representations shall be considered by the advisory board which shall make recommendations thereon to the Yang di-Pertuan Agong within three months of receiving the representations.

It is clear beyond peradventure that no factual allegation was made in the affidavit of the applicant's brother that no reminder was given or that the reminder as conveyed to the applicant was not understood by him because it was not in the Hokkien dialect. This application therefor suffered from the same infirmity as did *Tan Chin Haw v. Menteri Hal Ehwal Dalam Negeri Malaysia and another* and five other applications (*vide* criminal applications 44-117-92, 44-89-92, 44-29-93, 44-129-92 and 44-135-92 in the High Court in Malaya at Penang previously decided by me) in that it was devoid of such factual allegation as to merit any reply.

Therefore to contend in these circumstances that the applicant did not understand a reminder rendered in simple Bahasa Malaysia that he had a right to make representations (of which right he had been informed previously in the Hokkien dialect) is wholly untenable. On the strength of the affidavits filed, I found that the reminder was given to the applicant in a language that he understood and that r. 3(3) of the Rules was complied with. For these reasons the application was dismissed.

*General*

For the record and by way of clarification, this application was decided on 1 June 1994 when oral grounds of judgment were delivered. They were to be formalised in the event an appeal was filed. A notice of appeal was filed on 15 June 1994 but was unfortunately not brought to my attention. I called for the file of this case when I received a copy of a letter from the Deputy Registrar of the Supreme Court directing the Deputy Registrar of this Court to prepare the appeal record in this case within one month of the filing of the notice of appeal on 15 June 1994. The file was handed to me on Friday, 19 August 1994, whereupon these grounds of judgment were prepared for inclusion in the appeal record.